IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

Cr.A.No.460 of 2000.

Date of Decision :11th September, 2007..

State of H.P. …Appellant.

Versus:

Baman Singh. …Respondent.

Coram:

The Hon'ble Mr.Justice Sanjay Karol,Judge.

Whether approved for reporting?[1]

For the appellant: Mr.Ashok Chaudhary, Addl. Advocate General.

For Respondent. Mr.N.K.Thakur, Advocate.

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment dated 31st March, 2000 passed by the Judicial Magistrate, Ist Class, Court No.II, Una, H.P. in Criminal Case No.59-III/91 titled as State Vs. Baman Singh and another acquitting accused No.1-Baman Singh .

On 25.11.1990, Roshan Lal (PW-2) lodged a complaint, (Ext.PA), inter alia, stating that 59 trees of Khair and 6 trees of Sheesam were found cut from Ramgarh Forest, Una and apparently transported on Camels. Another complaint (Ext.PB) dated 26th November, 1990 was filed wherein some

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

more trees were shown to have been cut. Based on the said complaints, F.I.R.No.49/1990 was registered at Police Station, Bangana on 25th November, 1990 under Sections 32 and 33 of the Indian Forest Act and Section 379 I.P.C. Since accused-Baman Singh and S/Shri Amar Nath, Chanan Singh and Bhajna were living closely, based on suspicion, Baman Singh was interrogated.

During the course of the investigation Baman Singh allegedly made a disclosure statement (Ext.PE) on 29.11.1990 and logs which were alleged to have been cut from the forest were recovered vide Ext.PF from the house of one Gandharav Singh. Another disclosure statement was recorded on 30th November, 1990 and saws with which the trees were alleged to have been felled were also taken into possession vide recovery memo Ext.PF.

On the completion of the investigation, the challen was filed in the court against accused persons Baman Singh and Parmodh Singh. After due compliance of the provisions of Section 207 Cr.P.C., the accused was charged for an offence under Section 379 I.P.C. and Sections 32 and 33 of the Indian Forest Act. Since the accused pleaded not guilty, therefore the matter was put up to trial.

Statements of three witnesses, namely, Joginder Singh (PW-1), Roshan Lal (PW-2) and Satish Kumar (PW-3) were recorded and based on the same the statement of accused

Baman Singh under Section 313 Cr.P.C. was also recorded. During the trial accused Parmodh Singh absconded and was declared proclaimed offender.

PW-1 and PW-3 have been declared hostile and even otherwise have not supported the case of the prosecution. Therefore, the sole testimony of the remaining witness PW-2 Roshan Lal needs to be scrutinized.

As per the version of PW-2 on 21st and 22nd November, 1990, he had noticed certain trees had been felled from the forest. On 25th and 26th November, 1990 he got two complaints registered with the Police Station, Bangana. The accused was suspected to have committed the crime as his house is adjoining to the place of occurrence. Based on the statement of the accused persons (Ext. PC and Ext.PF), the logs were recovered from the house of one Gandharv Singh and the instruments (saws) with which the trees were felled were also recovered from the house of accused Baman Singh. In cross-examination, he has admitted that he did not notice the accused at the time of felling the trees. He has stated that it would have taken approximately 8 to 10 days for any person to have felled the trees and would have taken that much of time to transporte the same on Camels from the jungle up to the road head. He supposed to visit the forest every 15 days and at the time when it was noticed that the trees were cut he was accompanied by Om Parkash, Brahma Nand, Mohinder Singh. He has further

admitted that he is in the employment of the Superintendent of Kotkehlur Forest.

In my view, no much reliance can be placed on the sole testimony of this witness for the following reasons:

There is a delay of at least five to six days in lodging the complaint with the Police. The forest in question is managed by a private person, namely, Raja Mohinder Pal, who is declared as Superintendent of Kotkehlur Forest and this witness is in private employment with the said person. Since he was the custodian and duty bound to guard the forest, he had vested interest in the success of the prosecution. The statement of PW-2 is not corroborated by any person. Om Parkash, Brahma Nand and Mohinder Singh, according to this witness, had accompanied him at the time when the felling of the trees was noticed. Ext.PF and PE whereby the disclosure statement of the accused is recorded shows that the same was also witnessed by Joginder Singh and ASI Kishan Chand. Joginder Singh has not supported the case of the prosecution and for the reasons best known to the prosecution, Kishan Chand has not been examined at all. Further from the recovery memo Exts. PC and PG, it is clear that apart from PW-2 there were other witnesses, namely, Damodar Dass, Randeep Singh , Des Raj and Rup Singh. Even these witnesses have not been examined in the court. No explanation is forthcoming as to why the Investigating Officer or these independent witnesses have not been examined at all. This itself

casts doubt on the case of the prosecution. The statement of PW-2 is concerned, in my view, it does not inspire confidence and cannot be said to be trust worthy and reliable as there is contradiction with regard to the disclosure statement made by the accused. In his deposition he has stated that the accused have made the following statement:

> "YAY MAINAY WA MERAY SATHI NAY KHAIR OR DUSARI PRAJATI KI LAKKARI KATI HUI HAY AUR ESSAY MAINAY BECHA HAY USAY BRAMAD KAR SAKTA HOO"

But on the other hand, Ext.PE would show that the statement recorded by the Investigating Officer is as under:

> "MAY LAKKAR KHAIR PAPU NOO NANGAL BACHAY HUM ISKO BRAMAD KRA SAKATAY HAY"

The case of the prosecution is further falsified from the fact that as per PW-2, Ext.P-4 was bearing No.80 whereas when the log was produced in the court it was bearing No.24/63.Therefore, the case property has not been proved and pertains to some other case. No witness has come forward to state that the accused had fell the trees. The case of prosecution is also falsified from the fact that as per PW-2, the logs were recovered also from the house of Papu. There is nothing on record to substantiate this statement of PW-2. Therefore, there is no cogent, convincing and reliable evidence on record to substantiate the case of the prosecution beyond reasonable doubt.

For the aforesaid reasons, in my view, there is no perversity in the judgment of the trial Court necessitating interference in an appeal against the acquittal. The appeal is accordingly dismissed.

(Sanjay karol),
Judge.

September 11, 2007(R)